

## MEDIATE THIS !

## THE COLORFUL STORAGE BUILDING AND THE BLOCKED VIEW

BY STEVEN P. DINKIN

## Dear Mediator:

I live on a street with fantastic views. My neighbor built an ostentatious backyard storage building that's directly in line with my view. Its bright neon color reflects the sun into my eyes and is so distracting that I can no longer enjoy my view on sunny mornings. I've asked him to stain it a darker color to blend in better with the surroundings. He adamantly refuses, saying he likes it the way it is! What can I do to resolve this?

*Livid in Bay Park*

## Dear Livid:

If you asked our professional mediators to name the most challenging types of neighborhood disputes, outdoor views or sight lines would rank near the top.

Unlike noise, parking, trees and fences, sight lines are rarely subject to laws and legal enforcement because legislators are understandably averse to enter this fraught terrain.

Generally speaking, property owners in the United States do not have a

right to unobstructed access to light, air, or a view. But these cases still come to court, especially in California's coastal regions, and they can drag on for years.

Plaintiffs typically argue that a beautiful view has a tangible impact on quality of life and property value, so losing all or part of it should be actionable. But a view is purely aesthetic. So courts will not get involved unless a local government has enacted some kind of ordinance or easement.

California does have a "spite fence" law (Section 841.4 Civil Code) that states a fence "unnecessarily exceeding 10 feet in height maliciously erected or maintained for the purpose of annoying the owner or occupant of adjoining property is a private nuisance." And the proliferation of solar panels could open a new front on the premise that blocking sunlight will rob a home of an energy source.

None of this applies to your dilemma. Mediation usually offers an alternative to the costly pursuit of legal remedies. Where no



GETTY IMAGES ILLUSTRATION

**This week's question deals with a colorful storage shed — not depicted in the illustration above — that disturbs a Bay Park neighbor's view.**

remedy exists, mediation is the only option.

Given your neighbor's rigidity, you should wait a month before approaching him again. Then proceed gingerly. Send a small gift (produce, baked goods) with a note saying you respect his decision, and if he ever decides to reconsider, he should contact you to discuss how you

might compensate him.

Cat people are familiar with this psychology. A cat will pay no attention to a new toy if he thinks you want him to play with it. Your best bet is to feign indifference, toss the toy in a corner, and leave the room.

While waiting to see if curiosity piques your neighbor's interest, draw

up two lists: options for compensating him if he complies, and options for mitigating your view problem if he doesn't.

Mediators call such strategies "expanding the pie." In both cases, you use your imagination to widen your menu of possible solutions. Such creative thinking is surprisingly empowering.

If he's willing to repaint his building, you can offer him money (amount to be negotiated). Or you can barter for a service that he needs and you can provide, like landscaping or outdoor wiring.

If he isn't, you can use the money you would have paid him to hire a professional and explore inventive ways of masking the ugly view, like a strategically-placed outdoor tree or trellised climbing vine on your patio or in your window.

And who knows what the future holds? Your neighbor might eventually decide he'd like the compensation. And you might decide you like your mitigated vista just fine.

Steven P. Dinkin is a professional mediator who has served as president of the San-Diego based National Conflict Resolution Center since 2003. **Do you have a conflict that needs a resolution?** Please share your story with The Mediator via email at [mediatethis@ncrconline.com](mailto:mediatethis@ncrconline.com) or as an online submission by visiting [www.ncrconline.com/MediateThis](http://www.ncrconline.com/MediateThis). All submissions will be kept anonymous.

## NOTEBOOKS

From Union-Tribune reporting staff

## PUBLIC SAFETY: TERI FIGUEROA

## McStay trial delayed again to January

Just as trial for a man accused of killing a Fallbrook family of four was about to start, it's been postponed again.

Jury selection was supposed to begin at the end of July in the quadruple-homicide trial facing Charles "Chase" Merritt, who is accused in the beating deaths of business associate Joseph McStay, McStay's wife and their two preschool-aged sons.

Now, jury selection is set to start Oct. 29 in San Bernardino Superior Court.

That's roughly five years since the family was found in shallow graves in the San Bernardino County desert in November 2013.

Merritt was arrested the following November and pleaded not guilty to four counts of murder. The 61-year-old remains jailed without bail. Prosecutors are seeking the death penalty if he is convicted.

Testimony and the presentation of evidence in the case are not slated to start until January.

One of Merritt's defense attorneys said last week that the recent postponement came at their request, to allow them to complete more investigation. The attorney said he anticipates the investigation will be done by the time trial starts.

Joseph McStay ran a business providing interior water fountains primarily for corporate clients, and often hired Merritt to craft

custom-made fountains.

McStay, his 43-year-old wife, Summer, and their children Gianni, 4, and Joey Jr., 3, moved from San Clemente to Fallbrook in late 2009. They vanished in February 2010, leaving food on the counter and their beloved dogs unattended.

The disappearance left investigators with few clues. Detectives suspected that the family had taken off south of the border.

The case was eventually handed off to the FBI.

Then on Nov. 11, 2013, a dirt-bike rider came across the family's remains in the Mojave desert. Authorities now believe the family was beaten to death with a sledgehammer in their Fallbrook home and then dumped in shallow graves about 100 miles north outside Victorville.

Right after he was arrested in 2014, Merritt told the court he wanted his case fast-tracked. His attorney told a judge that Merritt had heart failure and feared he was dying.

Merritt represented himself in court for a short stretch but later gave up on that.

Court documents indicate the trial could run about three months.

[teri.figueroa@sduiontribune.com](mailto:teri.figueroa@sduiontribune.com)  
(760) 529-4945  
Twitter: @TeriFigueroaUT



JOHN GIBBINS U-T FILE

**Defendant Charles Merritt is accused of killing four members of the McStay family in February 10, 2010. The trial has been delayed by a postponement.**

## OUTDOORS: ERNIE COWAN

## Keeping natural balance in the yard

Maybe it was not quite the horrors of Jurassic Park, but we did have some unintended consequences when we started messing with nature at our home on Mount Whoville.

Who would think that feeding hummingbirds could become traumatic, especially for the hummingbirds?

Like many homeowners, we wanted to attract the energetic and colorful little hummers to our house, so we installed several nectar feeders in our front garden and our rear patio.

It was a great success, and soon we were mixing a gallon of nectar a day and feeding clouds of Anna's, Costa's, Allen's and the occasional black-chinned hummingbird.

As our garden matured, we had more hummers, butterflies, snakes, lizards, rabbits, squirrels, coyotes and other species enjoying our wildlife-friendly property. We also offered nest boxes, fountains and bird baths, loose seed feeders, seed cakes, sunflower seeds and raw peanuts that attracted lesser goldfinch, woodpeckers, orioles, quail, dove, towhee, scrub jays and armies of house finches.

Our garden was planted with native plants and shrubs known to attract birds and butterflies. In a few short years, we had a paradise where we recorded more than 50 species of native and migratory bird visitors, along with at least one division of animal survivors from Noah's Ark.

Then trouble began to arrive. I was sitting in my front yard in a pop-up blind, camera ready to get photos of parent blue birds bringing food to their hatchlings. Suddenly I heard a clattering of claws and looked out to see a Cooper's hawk who had just landed on the roof of the birdhouse.

Creatures of nature are opportunists, and our success in attracting lots of birds also attracted Mr. Cooper, who could not resist this smorgasbord of his favorite small-bird delicacies. Fortunately, while I was watching, there were no small birds injured. Parent bluebirds stayed clear of the area, and the hatchlings remained quiet.

Since then, I have often watched birds vanish from our feeders. Almost always, I will then see a Cooper's hawk nearby. Even our quail post a lookout on a high point and will sound an alarm when the hawk

appears, causing the feeding quail to dash for cover in deep brush.

Our next encounter was far more dramatic.

My wife called me to her den because a roadrunner had hopped up on our porch railing in front of her window.

How cool to get so close and personal as he squatted down on the railing, unconcerned that we were only a few feet away. We marveled at our luck to be so close.

Suddenly, the roadrunner erupted, lifting skyward and snatching a hummingbird that had come in to enjoy the nectar feeder only a couple of feet above him.

We were stunned. I grabbed a bird book and that was the first time I realized that roadrunners eat hummingbirds, along with other small birds when they catch them.

We were not only putting out feeders for hummers, but apparently also providing a convenient feeder for the roadrunner. Fortunately, that was an easy fix. I removed that feeder and hung it at a location that did not provide a nearby launching pad for the roadrunner.

Problem solved. Now we continued to enjoy our roadrunner almost daily as he foraged in our garden for snails, small lizards and even a rattlesnake. Balance had returned to nature at Mount Whoville.

The coyote is normally considered the wily one, but our roadrunner found another hunting spot on our back patio. He discovered he could perch on a low fountain and spring up to snatch hummers feeding at a hanging feeder. He became so bold, that I could be enjoying a morning cup of coffee on the patio and he'd come right up and assume his post, not more than 10 feet from me.

I ruined this feeding run by lifting the nectar jar about 2 feet higher, giving the hummingbirds a little more notice of impending doom. His success rate dropped off dramatically.

For now, we have returned to balance on Mount Whoville. Mr. Roadrunner seems quite comfortable around us. He announces his arrival by a series of coos or rapid clacks and seems content once again foraging for food, rather than waiting for it to come to him.

Email [ernie@packtrain.com](mailto:ernie@packtrain.com) or visit [erniesoutdoors.blogspot.com](http://erniesoutdoors.blogspot.com).

## FROM THE ARCHIVES | LOOKING BACK OVER 150 YEARS

JULY 22, 1935:  
AGUA CALIENTE RESORT PADLOCKED

The San Diego Union-Tribune will mark its 150th anniversary in 2018 by presenting a significant front page from the archives each day throughout the year.

## Monday, July 22, 1935

In 1935, Mexican President Lázaro Cárdenas, shut down casinos across Mexico, including Tijuana's famed Agua Caliente.

The opulent Agua Caliente Hotel and Casino had opened in 1928. The resort and race-track attracted Hollywood stars including Charlie Chaplin, Buster Keaton and Mae West. Margarita Cansino — who later changed her name to Rita Hayworth — was discovered while dancing in the Agua Caliente floor show.

Here are the first few paragraphs of the story:

## ALL CALIENTE PADLOCKED

## GAMING BAN FORCES FULL SHUT-DOWN

Foreign Club Also Ready to End Operations;  
5000 Jobless Plan Fight on Drastic Cardenas Decree

Gambling ceased at Agua Caliente and Tijuana in the early hours of yesterday morning, and last night Agua Caliente closed entirely. Doors to the hotel, dining room, golf club, spa and race track were locked after directors of the \$10,000,000 resort met and considered the anti-gambling decree issued by President Lazaro Cardenas of Mexico Saturday morning.

Guests at Agua Caliente hotel where notified the hostelry would close and departed

during the afternoon and early evening. Dinner was served last night but when the last floor show ended, dancers and musicians packed up their costumes and left. Later in the night the waiters and others finished their job of putting things in order and departed, too.

## Abiding by Order

Today office forces were to set about moving records, stocks and all goods to ware-



houses.

"An order has been issued by Pres. Cardenas to close the games at Agua Caliente," Baron Long, president of the resort, said after the directors' meeting. "The president's word is law and we are abiding by the order which will be carried out in full.

"Agua Caliente will close Sunday night. This means the hotel, spa, restaurants, bars, free zone shops and golf club—the entire institution."

Though no formal announcement was made by the directors, it was believed they decided it would not be a profitable venture to keep the resort open without games of any sort. The policy for complete closing also followed that taken by resorts elsewhere throughout Mexico which shut down when gambling was banned. Gambling was banned in resorts near Mexico, D.F., and at

all other points except Tijuana and Caliente when Cardenas first took office.

## Club Is Open

In Tijuana, the Foreign club, (the) only place in which gambling has been allowed, opened its doors yesterday despite an earlier announcement to the contrary.

"We decided to keep our dining room and bar open today," said Wirt G. Bowman, president of the concern, who came from Nogales, Ariz., where he now makes his home. "We have stocks of food on hand and will probably remain open for a day or two and then close our doors.

"We shall abide by the order of the president. If he desires that we open up again, we shall; otherwise not."

Sightseers thronged Tijuana and Agua Caliente yesterday. Many were regular patrons, other tourists on a week-end visit, and many were just the curious, attracted by a desire to see what the resorts looked like before they closed.

## Strange Sight

At Agua Caliente those who entered the casino were greeted by a strange sight. Where roulette and other gambling tables had been, were only a few ordinary tables and furniture taken from lounge rooms at the hotel. Every remnant of the gambling games had been removed in the early hours yesterday morning. In the Foreign club, Tijuana, the tables still were in their places but dealers were gathered in small groups considering what might be done.

**ONLINE:** View this and other anniversary front pages online at [sandiegouniontribune.com/150-years](http://sandiegouniontribune.com/150-years).